REMARKS

The Invention

This invention relates to a cap, generally known as "crown cork" or a "crown closure," used for sealing mainly glass bottles with carbonated (beer, soft drinks, etc.) and non-carbonated beverages (juices, sauces, etc.). Prior art crown closures have a shell with a generally flat disk, a curved portion, and a depending skirt. When attached to a bottle, the skirt and the curved portion were crimped to conform to the contour of a bottle mouth. The disadvantage of the prior art crown closures was that the curved portion did not conform to the shape of the bottle prior to crimping. Because of this, prior art crown closures tended to slip during the crimping procedure.

This invention overcomes the disadvantage of the prior art by providing a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle. Thus, during the crimping procedure, the crown closure is less likely to slip.

Status of the Claims

Claims 1-16 are pending are pending in the application.

Claims 14-16 are withdrawn from consideration.

Claims 1 and 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Punte*, U.S. Patent No. 2,327,455.

Claims 2-6 and 8-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte*, U.S. Patent No. 2,327,455 in view of *Leenaards*, U.S. Patent No. 3,827,594.

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte*, US. Patent No. 2,327,455 in view of *Ferngren*, U.S. Patent No. 2,099,056.

Claims 1 and 7; Rejected Under 35 U.S.C. § 102(b)

Claims 1 and 7 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Punte*, U.S. Patent No. 2,327,455. *Punte* discloses a crown closure structured to engage a bottle without a pad or liner. As shown in Figure 2, the skirt serrations extend from the bottom of the skirt to, approximately, 70% to 90% of the skirt height, and in any event more the 50% of the skirt height. When the crown closure engages a

bottle, as shown in Figure 3, approximately the lower 10% of the skirt does not adapt to the curved shape of the bottle. Thus, it can be easily determined that *Punte* serrations extend into the "curved portion" of the bottle as installed. To the extent the Examiner asserts that the serrations do not extend into the curved portion as shown in Figure 2, Applicants first note that Figure 2 is not sufficiently clear as to make this determination, and second, and more importantly, the "curved portion of Figure 2 is not "adapted to be the same shape as the mouth contour of a bottle." That is, the Examiner cannot claim the "curved portion" is both (1) the "sharp turn" (reference number 9) of Figure 2, which may not overlap with the serrations but is not the same shape as the mouth contour of a bottle, as well as (2) the deformation (reference number 13) of Figure 3, which may be the same shape as the mouth contour of a bottle but which includes the serrations. The "curved portion" must be one, the other, or neither.

As stated in MPEP §2131:

> A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.... The identical invention must be shown in as complete detail as is contained in the ... claim.

Id., citing (Verdigaal Brothers v. Union Oil Co. of California, 814 F.2d 628, 631 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989). It is submitted that upon reading the *Punte* reference, one skilled in the art would not consider having a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle and wherein the serrations do not project into the curved portion as set forth in both claims 1 and 7.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. §102(b) set forth in paragraph 3 of the September 23, 2004 Office Action.

Claims 2-6 and 8-12; Rejected Under 35 U.S.C. § 103(a)

Claims 2-6 and 8-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte*, U.S. Patent No. 2,327,455 in view of *Leenaards*, U.S. Patent No. 3,827,594. *Punte* and its failure to disclose the elements of the present invention are discussed above. *Leenaards* discloses a crown closure that is shaped to accommodate a seal that engages the lateral face of the bottle to which the closure is attached. That is, the seal is located between the curved portion of the crown closure and the outer side of the bottle. As such, the curved portion of the shell cannot be structured to have the same shape as the container to which the closure will be attached as the curved portion must be shaped to provide a space for the seal. This space is identified by reference number 18 on Figure 2 and described at Col. 4, lines 3-4. *Leenaards* notes that *after* deformation, *i.e.* the crimping procedure, the closure is shaped to the mouth of the container.

Applicants note that the purpose of the *Punte* invention is to have a crown closure that does not include a seal whereas the purpose of the *Leenaards* invention is to have a lateral seal. As such, these references cannot be combined. Moreover, as stated in, *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987), "obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, absent some *teaching, suggestion, or incentive* supporting combination." (emphasis added). Put another way, "the mere fact that disclosures or teachings of the prior art *can be* retrospectively combined for the purpose of evaluating obviousness/nonobviousness issue does not make the combination set forth in the invention obvious, unless the art also suggested the desirability of the combination ...." *Rite-Hite Corp. v Kelly Co.*, 629 F.Supp. 1042, 231 U.S.P.Q. 161, *aff'd* 819 F.2d 1120, 2 U.S.P.Q.2d 1915 (E.D.Wis.1986) (emphasis added). Similarly, the court in, *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991), stated that "both the suggestion [to make the claimed apparatus] and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure."

With regard to *Punte* and *Leenaards*, there is no *teaching, suggestion, or incentive* in either reference to suggest the combination recited by the Examiner. As such, it is not proper to base a rejection under 35 U.S.C. §103(a) on these combination

of references. Moreover, neither reference teaches a crown closure wherein the curved portion is adapted to be the same shape as the mouth contour of a bottle and wherein the serrations do not project into the curved portion as set forth in Claims 2-6 and 8-12.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. §103(a) set forth in paragraph 5 of the September 23, 2004 Office Action.

Claim 13; Rejected Under 35 U.S.C. § 103(a)

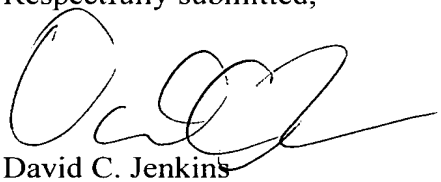
Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Punte* in view of *Ferngren*, U.S. Patent No. 2,099,056. *Punte* and its failure to disclose the elements of the present invention are discussed above. *Ferngren* discloses a flexible plastic cap for a flexible bottle. *Ferngren* does not discuss a crown closure. As crown closures and plastic caps are different types of closures, these references cannot be combined. It is again noted that, "obviousness cannot be established by combining teachings of the prior art to produce the claimed invention, *absent some teaching, suggestion, or incentive supporting combination.*" *In re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1987)(*emphasis added*). Here, there is no suggestion that the cited references should be combined.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. §103(a) set forth in paragraph 6 of the September 23, 2004 Office Action.

CONCLUSION

In view of the remarks above, Applicants respectfully submit that the application is in proper form for issuance of a Notice of Allowance and such action is requested at an early date.

Respectfully submitted,



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